



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद
 OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
 चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road
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DIN – 20260171MN000000D27D

क	फ़ाइल संख्या FILE NO.	S/49-263/CUS/AHD/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTOM-000-APP-500-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	01.01.2026
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	05/AR/ADC/SRT/2024-25 dt. 08.11.2024 passed by the Additional Commissioner, Customs, Surat.
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	01.01.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Suroj Buildcon Pvt Ltd., 33, Srimali Society, 402, Vartali Apartment, Ahmedabad-380 009, Gujarat.



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है. This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.

	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल.
(a)	any goods imported on baggage
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
.3	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं. 6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी. ए. -3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं



	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रूपए.	
(
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रूपए	
(
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रूपए.	
(
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10 अंश अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10 अंश अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।	
(
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-	
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or	
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	



Order-In-Appeal

M/s Suroj Buildcon Pvt Ltd., 33, Srimali Society, 402, Vartali Apartment, Ahmedabad-380 009, Gujarat. (hereinafter referred to as "the Appellant") have filed the present appeal against the Order-In-Original No.: 05/AR/ADC/SRT/2024-25 dt. 08.11.2024 (herein after referred to as "the impugned order") passed by the Additional Commissioner of Customs, Customs Division Surat, Surat (herein after referred to as "the "adjudicating authority").

2. Facts of the case, in brief, are that the appellant has supplied TMT Bars and MS Plates of various size falling under Chapter 72 to an SEZ Unit viz. Jubilant Ingrevia Ltd. situated within Jubilant SEZ. The subject goods were attracting export duty @15% during the period of 22.05.2022 to 18.11.2022 as per the provisions of Notification No.28/2022-Customs and 29/2022-Custom, both dated 21.5.2022. As the appellant had not paid export duty on their supply to SEZ Unit, a Show Cause Notice dated 16.05.2024 came to be issued by Additional Commissioner of Customs, Custom Division-Surat, towards demand of Export Duty of Rs. 32,38,496/- along with interest under the provisions of Section 28(1) and Section 28AA of the Customs Act, 1962. Vide impugned order dated 08.11.2024, the said demand and interest have been confirmed by the adjudicating authority.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the Appellant have filed the present appeal on 30.01.2025. The Appellant have filed Application for condonation of delay also. The appellant also filed submission on 19.12.2025. The appellant inter-alia, raised various contentions and filed detailed submissions as given below in support of their claim:

- *The appellant submit that export duty is not chargeable on supply of goods to SEZ unit.*

The export duty is leviable on goods exported. Further, the export has been defined as taking goods out of India to a place outside India. The term India has been defined to include territorial waters of India. In the present case, it is undisputed that the impugned goods are not taken out of India but are allegedly supplied to SEZ unit. Hence, it is clear that the export duty is not leviable in the present case.

- *Without prejudice to the above, the export duty cannot be demanded from the Appellant, as the Appellant is not exporter in the present case.*

It is submitted that the export duty is payable by the exporter. The term export has been defined in section 2(20) of the customs Act as "exporter", in relation to any goods at any time between their entry for export and the time when they are exported, includes [any owner, beneficial owner] [Substituted 'any owner' by Finance Act, 2017 (Act No. 7 of 2017), dated 31.3.2017.] or any person holding himself out to be the exporter; In the present case, Jubilant group of SEZ is owner and beneficial owner of the goods. Hence, they are the exporter. The same is substantiated from the fact that the payment of export duty by them has not been disputed by the customs authority. Consequently, the demand of export duty from the Appellant is not sustainable.

- *The appellant state and submit that the export duty paid by the Jubilant Group cannot be demanded again from the Appellant.*

As explained in the facts above, the customs duty has been paid by the Jubilant group and the same has been accepted by the customs department. In such case, further demand from the Appellant would lead to double levy of same set of taxes on same set of transactions. It is settled law that taxes shall not be levied twice and without authority of law. In view of the above, it is clear that the demand in the present case is not sustainable and impugned order shall be set aside.

- *The appellant state that the Ld. Adjudicating authority has acted with a prejudiced mind violating principle of natural justice and prescribed procedure.*

It is submitted that SCN in the present case has been issued in terms of the provisions of section 28(1) of the Customs Act. The said section provides that before issue of SCN, pre-consultation shall be done in prescribed manner. The pre-consultation regulations provide that after issue of consultative letter 15 days shall be granted. However, in the present case, the SCN has been issued within a weeks time after issue of consultative letter. Thus, is clear that entire proceedings in the present case is void ab initio and impugned order shall be set aside on this ground itself.

- *Part of the demand in the present case is time barred being raised beyond the period of 2 years from the relevant date. Hence, demand to that extent is not sustainable in any case.*

- *The Ld. Adjudicating authority has erred in contending that the appellant supplied goods i.e. TMT Bars, MS Plate to Jubilant;*



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As explained in the facts above, the Appellant was granted contract for services in relation to civil work. Hence, essentially, the Appellant has provided civil work services and not supplied any goods. Once, it is clear that there is no supply/ export/ import of goods, the question of levy of export duty does not arise. Impugned order passed without appreciating the same needs to be set aside on this ground itself. The appellant submits impugned order is not sustainable on merits itself, the Appellant is also not liable for interest.

3.1 Further, the appellant, during the personal hearing on 24.12.2025, filed additional submission, which is mentioned as under:

3.1.1 The appellant states and submit that the issue of their present case is squarely covered under various Judgments which are in favour of the appellant.

The appellant submit that demand of export duties on the sale of goods from DTA to SEZ is erroneous as there is no enabling provisions under the Customs Act and the provisions of SEZ Act/ Rules made thereunder cannot be interpreted as basis for levy of customs duty/ export duty. The appellant states and submit that the levy of export duty on goods supplied from the Domestic Tariff Area (DTA) to a Special Economic Zone (SEZ) unit is not justified. It is undisputed that the impugned goods are not taken out of India but are supplied to SEZ unit. Hence, it is clear that the export duty is not leviable in the present case. The appellant states and submit that the issue of their case of export duties leviable on the sale of goods from DTA to SEZ unit is no more res integra and settled by the judgment passed by the Hon'ble Supreme Court of India. The court pronounced that demand of export duty on the sale of goods from DTA to SEZ units cannot be raised.

The appellant state and submit that the appellant placed reliance on the judgment passed by the **Hon'ble Supreme Court of India in the case of Union of India Vs. Adani Power Ltd., (2025) 36 Centax 257 (S.C.) dt. 28.08.2025** which was pronounced on similar issue.

Further, It is respectfully submitted that the issue is no longer res integra in view of the authoritative judgment of the **Hon'ble High Court of Andhra Pradesh in TUF Metallurgical Pvt. Ltd. v. Union of India, reported at (2025) 35 Centax 280 (A.P.)**, wherein the Hon'ble Court, after an elaborate examination of the scheme of the Special Economic Zones Act, 2005, the Customs Act, 1962, and the SEZ Rules, 2006, has categorically held that supplies of goods from the Domestic Tariff Area (DTA) to a Special Economic Zone (SEZ) do not attract export duty, as such movement of goods does not constitute "export" for the purpose of levy under the Customs Act.

The Hon'ble Court has clearly observed that although Section 2(m)(ii) of the SEZ Act deems DTA supplies to SEZ as "exports", such deeming fiction is confined strictly to the purposes of the SEZ Act and cannot be extended to create a charge of export duty in the absence of a specific charging provision under the Customs law.



The Hon'ble High Court further held that there is no provision under the SEZ Act, 2005 authorizing levy of customs or export duty on movement of goods from DTA to SEZ, unlike Section 30 of the Act, which expressly provides for levy of duty only when goods are cleared from SEZ to DTA.

Accordingly, the ratio laid down in Adani Power Ltd and TUF Metallurgical Pvt. Ltd. squarely applies to the present case, and the demand of export duty on supplies made from DTA to SEZ is wholly unsustainable in law and liable to be set aside.

3.1.2 The appellant submit that export duty is not chargeable on supply of goods to SEZ unit.

It is submitted that The Central Government is empowered to levy customs duty.

Section 12 of the Customs Act, 1962, outlines the imposition of customs duties on goods imported into or exported from India. Section 12 reads as follows –

Section 12. Dutiable goods. -

(1) Except as otherwise provided in this Act, or any other law for the time being in force, **duties of customs** shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, **on goods** imported into, or **exported from, India**.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

[Emphasis supplied.....]

The term "export" is defined as under:

Section 2(18) "Export," with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

From the above it is clear that the export duty is leviable on goods exported i.e., taking goods out of India to a place outside India. The term India has been defined to include territorial waters of India. In the present case, it is undisputed that the impugned goods are not taken out of India but are supplied to SEZ unit. Hence, it is clear that the export duty is not leviable in the present case. It is submitted that the above definition of export shall be adopted for the purpose of interpretation of the term "export". It is submitted that the provision for levy of export duty is under the Customs Act. The levy has been imposed on goods exported from India. Both the SEZ unit and the DTA unit are located within the territorial waters of India. Thus, Section 12 of the Customs Act 1962 (which is the charging section for levy of customs duty) is not attracted for supplies made by a DTA unit to a unit located within the Special Economic Zone. Further, there is no charging section under the SEZ Act which levies export duty on supplies of goods from DTA unit to SEZ unit.

Article 265 of the Constitution of India prohibits levy or collection of tax except by authority of law. If a person has not been brought within the ambit of the charging section by clear words he cannot be taxed at all. **COMMISSIONER OF WEALTH-**

TAX VERSUS ELLIS BRIDGE GYMKHANA AND OTHERS - 1997 (10) TMI 2 - SUPREME COURT]

Thus, in absence of any charging section, export duty cannot be levied on SEZ supplies by DTA units.

It is submitted that the Ld. Adjudicating Authority has considered the provisions of SEZ Rules i.e., Rule 27(1) therein as basis to confirm levy of export duty in the present case. Rule 27(1) of the SEZ Regulations, 2006, provides for the imposition of export duties on the sale of goods from DTA to SEZ.

It is submitted that the SEZ Act, 2005/ SEZ Regulations are authority to empower the Government to levy customs duties. It is submitted that demanding export duties on the sale of goods from DTA to SEZ is erroneous as there is no enabling provisions under the Customs Act and the provisions of SEZ Act/ Rules made thereunder cannot be interpreted as basis for levy of customs duty/ export duty. It is important to note that for the present proceedings are also initiated under the Customs Act and not under SEZ Act/ rules made thereunder. In such cases, it is clear that the department has also accepted that the levy shall be interpreted in light of the provisions of the Customs Act. Thus, the reliance on the provisions of SEZ Rule is unwarranted and misplaced. It is settled law that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law.

It is submitted that the Statement of Objects and Reasons of the SEZ Act, 2005 indicates that the policy for setting up of Special Economic Zones had been adopted by the Government of India with a view to provide an internationally competitive environment for export. The objectives of the SEZ's include making available (to the Unit) goods and services free of taxes and duties for export production, supported by integrated infrastructure. In line with the aforesaid objective of providing goods and services free of taxes and duties to the Unit in the SEZ or to a Developer for the purpose of establishing an integrated infrastructure for export production, provisions have been made in the SEZ Act, 2005 granting exemption from taxes and duties, which would otherwise have been leviable in the absence of any provision for exemption from such duties. Section 7 of the SEZ Act exempts goods or services exported out of or imported into or procured from the Domestic Tariff Area by a Unit or Developer from the payment of taxes, duties or cess under the enactments specified in the First Schedule. Thus, demand of export duty on alleged supplies made to SEZ unit will defeat the legislative intent.

The above view is also supported by various decisions of higher judicial authorities as under:

- In the case of **ESSAR STEEL LTD. VERSUS UNION OF INDIA - 2009 (11) TMI 141 - GUJARAT HIGH COURT**, the Hon'ble Gujarat High Court, supports the contention that no export duties are imposable on the supply of goods from DTA to SEZ. The court, while discussing the scope of Section 51 of the SEZ Act, emphasized the overriding effect of the SEZ Act and refuted any conflicting interpretation. The judgment underscores that the movement of goods from DTA to SEZ is treated as an export under the SEZ Act, and attempting to impose duties runs counter to the purpose of this legal fiction.
- **ADVAIT STEEL ROLLING MILLS PVT. LTD. VERSUS UNION OF INDIA - 2013 (8) TMI 33 - MADRAS HIGH COURT**;



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• **TIRUPATI UDYOG LTD. VERSUS UNION OF INDIA - 2010 (7) TMI 768 - ANDHRA PRADESH HIGH COURT**

The above decisions are binding on the lower authorities and impugned order passed without appreciating the same shall be set aside.

It is important to note that even after the above referred decisions, no amendments have been made to the Customs Act, 1962, the Customs Tariff Act, 1975, or the SEZ Act, 2005, authorizing the imposition of customs duties on the supply of goods from DTA to SEZ. Consequently, the demand for export duties on the sale of goods from DTA to SEZ is not sustainable being without authority of law. Impugned order passed without appreciating the same shall be set aside on this ground itself.

3.1.3 Without prejudice to the above, the export duty cannot be demanded from the Appellant, as the Appellant is not exporter in the present case.

It is submitted that the export duty is payable by the exporter. The term export has been defined in section 2(20) of the customs Act as

"exporter", in relation to any goods at any time between their entry for export and the time when they are exported, includes [any owner, beneficial owner] [Substituted 'any owner' by Finance Act, 2017 (Act No. 7 of 2017), dated 31.3.2017.] or any person holding himself out to be the exporter;

In the present case, Jubilant group of SEZ is owner and beneficial owner of the goods. Hence, they are the exporter. The same is substantiated from the fact that the payment of export duty by them has not been disputed by the customs authority.

Consequently, the demand of export duty from the Appellant is not sustainable.

3.1.4 The appellant state and submit that the export duty paid by the Jubilant Group cannot be demanded again from the Appellant.

It is submitted that the customs duty/ export duty in the present case, has been paid by the Jubilant group and the same has been accepted by the customs department. In such case, further demand from the Appellant would lead to double levy of same set of taxes on same set of transactions. It is settled law that taxes shall not be levied twice and without authority of law.

Reliance is placed on the decisions under service tax law wherein it has been held that once the service tax has been paid by any party to the transaction (supplier in case of services liable for payment of service tax by recipient under reverse charge mechanism), further demand of service tax is not sustainable.

- **Dhariwal Industries Limited vs. CCE 2023(10) TMI 595 CESTAT AHMEDABAD**
- **ELKOS Pens Limited vs. CST 2018 (8) TMI 1806 CESTAT Kolkata [2019 (24) GSTL 652 (Tri-Kol)]**



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Similarly in case of **Sarswati Engineering vs. CCE 2023 (12) TMI 1005 CESTAT Ahmedabad**, it has been held that "it is settled law that once service suffered the service tax irrespective of anyone paid the service tax, the service tax cannot be demanded twice"

In view of the above, it is clear that the demand in the present case is not sustainable and impugned order shall be set aside.

3.1.5 The Ld. Adjudicating authority has erred in observing that the appellants supplied goods i.e. TMT Bars, MS Plate to Jubilant.

It is submitted that as explained in the facts of the case, the Appellant was granted contract for services in relation to civil work. Hence, essentially, the Appellant has provided civil work services and not supplied any goods. Once, it is clear that there is no supply/ export/ import of goods, the question of levy of export duty does not arise. It is submitted by way of amendment in the constitution article 366(29A), artificial split of composite contract was allowed for the purpose of levy of sales tax. However, there is no such deeming fiction for the purpose of levy of customs duty. It is submitted that in cases like that of the present case, the ratio laid down by the Hon'ble Supreme Court in landmark case of **State of Madras vs. Ganoon Dunkerley & Co. Ltd. 1958 (04) TMI 42 – SC** is clearly applicable wherein it has been held that States cannot bifurcate the material and labour portion in an indivisible contract and levy sales tax on the material supplied. The apex court categorically defined the entry 48 of list II of seventh schedule to the Govt. of India Act, 1935 which was authorizing States to levy sales tax on the sale of goods in a State. The States were contending that as per above entry they can levy sales tax on the material supplied in a building contract and it is a right given to them by the constitution but the Apex Court disagreed with the contention of States and clarified that the definition of sale and purchase of goods given in constitution of India must be read with the definition given in "Sales of goods Act, 1930".

It is submitted that the present transaction is transaction of alleged export and levy of export duty on export of goods. However, the analogy of the above decision of the Hon'ble Supreme Court wherein it has been held that the material portion in an indivisible contract cannot be separated for levy of tax on material.

In view of the above, it is clear that there is no export of goods. Hence, impugned order passed without appreciating the same needs to be set aside on this ground itself.

In view of the above, it is clear that the Appellant is not liable for tax/ duty. Consequently, the interest cannot be demanded.

PERSONAL HEARING:

4. Personal hearing in the matter was held on 24.12.2025 in virtual mode. Shri Anand Nahar, CA and Authorised representative, appeared for hearing on behalf of the Appellant. He reiterated the submissions made in the appeal memorandum. He submitted additional submission, which is already mentioned at para 3.1 above.

AN



DISCUSSION & FINDINGS:

5. Before going into the merits of the case, in the Form No. C.A.-1, the appellant has shown the date of communication of the impugned order dated 08.11.2024, as '25.11.2024'. Whereas, the appeal has been received in this office on 30.01.2025. Thus, this appeal has been filed after a delay of 04 days beyond the normal period of 60 days, as prescribed for filing appeal under Section 128 of the Customs Act, 1962. The appellant has applied for condonation of delay in filing of appeal. Considering the reason mentioned in the application for condonation of delay, I accept the same and allow & condone the delay in filing appeal in terms of Section 128(1) of the Customs Act, 1962.

5.1 The appellant has submitted a printout of e-receipt towards payment of Rs. 2,42,890/- vide Challan Ref. No. 6448087715 dated 28.01.2025 towards payment of pre-deposit calculated @7.5% of the duty amount under the provisions of Section 129E of the Customs Act, 1962. As the appeal has been filed within the time-limit and complies with the requirement of Section 129E of the Customs Act, 1962, the appeals has been admitted and being taken up for disposal on merits.

5.2 One set of Appeal memorandum and related appeal papers received from the appellant forwarded to the adjudicating authority i.e the Additional Commissioner, Customs, Division-Surat vide letter dt. 25.03.2025, but no reply thereof has been received. So, I proceed to decide the appeal on the basis of documents submitted by the appellant.

6. I have carefully gone through the impugned order, the appeal memorandum filed by the Appellant, as well as records of the case. The issues to be decided in the present appeal is whether the impugned order passed by the adjudicating authority confirming Export duty on the goods supplied by the appellant to SEZ Unit is leviable or not, in the facts and circumstances of the case, is legal and proper or otherwise.

6.1 In the present issue of export duty liability on the goods supplied to the SEZ unit by the DTA supplier, the Judgment dated 04.11.2009 in the case of **Essar Steel Limited and Adani Power Ltd. Vs. Union of India** [2010 (249) E.L.T. 3 (Guj.) = 2009 (11) TMI 141 - GUJARAT HIGH COURT], Hon'ble High Court of Gujarat is very relevant and important.

The Hon'ble High Court of Gujarat, in above judgement has held that the levy of export duty on the goods supplied from Domestic Tariff Area to Special Economic

Zone is not justified; that the petitioners not to be called upon to pay export duty on movement of goods from DTA to SEZ units or developers. I note that Special Leave to Appeal (Civil) No. 5698 of 2010 with SLP (C) Nos. 6204, 6307, 7818, 7931, 9243 and 10118 of 2010 filed by Union of India against the aforesaid Judgment dated 04.11.2009 has been dismissed by Hon'ble Supreme Court on 12.07.2010 [Union of India v. Essar Steel Ltd. - 2010 (255) E.L.T. A115 (S.C.)]. However, the said Order dated 12.07.2010 has been recalled by Hon'ble Supreme Court vide Order dated **10.02.2020** reported as **Union of India Vs. Essar Steel India Ltd.** [2022 (380) ELT 403 (SC)] and the SLPs had been restored. Now, Hon'ble Supreme Court has decided this issue vide Order dated 28.08.2025, which has been reported as **Union of India Vs. Adani Power Ltd.** [(2025) 36 Centax 257 (S.C.)]. In the said latest Order, it has been observed and held by the Apex Court as under :

"4.3 Similarly, the third question has been considered by the High Court in paragraph 41.3 and after discussion, the answer to the said question has been given in paragraph 41.3.4 of the impugned judgment. Consequently, the High Court has held in paragraph 42 as under:

"42. In view of the above discussion and findings arrived at as well as conclusion drawn, the levy of export duty on goods supplied from the Domestic Tariff Area to the Special Economic Zone is not justified. The petitioners are, therefore, not to be called upon to pay export duty on movement of goods from Domestic Tariff Area to Special Economic Zone units or developments."

.....

"6. We find that the High Court has rightly arrived at the conclusions in the aforesaid paragraphs on a correct interpretation of the provisions of the aforesaid two Acts. In the circumstance, we do not find any reason to interfere with the impugned judgment. Hence, the appeals are dismissed.

7. On a conjoint reading of the aforesaid provisions, we find that Section 12 of the Customs Act, 1962 is the charging Section. However, under Section 26 of the SEZ Act, power is reserved to grant an exemption or a concession if under the provisions of the Customs Act, 1962, a duty is leviable as per the charging Sections.



8. It is also necessary to observe as submitted by the learned senior counsel for the respondent(s) that the Madras High Court as well as the Andhra Pradesh High Court have also taken a similar view as discussed in the aforesaid impugned judgment. In the circumstances, all appeals arising therefrom are also dismissed."

6.2 However, I find that the above Order/Judgment relates to the period prior to the amendment of Rule 27 of the SEZ Rules, 2006, vide Notification No. GSR 909(E) dated 19.09.2018 issued by the Ministry of Commerce and Industry. Vide the said amendment, fifth Proviso to Sub-Rule (1) of Rule 27 of the SEZ Rules, 2006, has been inserted, which is as under:

"Provided also that supplies from Domestic Tariff Area to Special Economic Zones shall attract export duty, in case, export duty is leviable on items attracting export duty."

Therefore, it has to be examined as to whether export duty in this case can be demanded wherein the period involved is from 22.05.2022 to 18.11.2022 i.e. after insertion of the above-mentioned Proviso from 19.09.2018.

6.3 I find that above-mentioned fifth Proviso to Sub-Rule 27(1) has been struck down by Hon'ble High Court of Andhra Pradesh in Writ Petition No. 15528 of 2024 in the case of **TUF Metallurgical Pvt. Ltd. vs. Union of India** reported as (2025) 35 Centax 280 (A.P.) [18-09-2025]. Para 27 of the said Order is as under:

"27. Be that as it may, we set aside the decision dated 26.04.2024 and hold that 5th proviso to sub-rule (1) of Rule 27 of the Special Economic Zone Rules, 2006, as ultra vires the Special Economic Zone Act, 2005 and is accordingly, struck down. This writ petition is accordingly allowed."

Further, I find that the even after insertion of the fifth Proviso in Sub-Rule 27(1) of the SEZ Rules, 2006, vide Notification dated 19.09.2018, there are no corresponding amendments in the provisions of Section 2(18) and 2(19) of the Customs Act, 1962, which define the terms "export" and "export goods" respectively. The said definitions are as under:

- (18) "export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;
- (19) "export goods" means any goods which are to be taken out of India to a place outside India;



6.5 Further, the definition of the term "India", as given in Section 2(27) *ibid*, says that "India" includes the territorial waters of India. In absence of amendment in any statutory provision of the Customs Act, 1962, I am of view that Export duty cannot be levied merely by virtue of amendment in Rule 27(1) of the SEZ Rules, 2006 vide Notification dated 19.09.2018. Further, the said amendment, i.e. fifth Proviso to Rule 27(1), has already been held as ultra vires to the SEZ Act, 2005 and struck down by Hon'ble High Court of Andhra Pradesh in the case of **TUF Metallurgical Pvt. Ltd. vs. Union of India** (supra).

6.6 As regards the requirement of amendments in the provisions of the Customs Act, 1962, to levy export duty on supply of goods from DTA to SEZ, I also rely upon the Order dated 27.04.2012 of Hon'ble Madras High Court in the case of **Advait Steel Rolling Mills Pvt. Ltd. Vs. Union of India** [2012 (286) E.L.T. 535 (Mad.)]. The last Para of the said order is as follows (underline supplied):

"30. As there is no movement of goods from India to a place outside India, export duty cannot be levied. In fact, there is no 'export' of goods, as per the relevant provisions of the Customs Act, 1962. When the Special Economic Zones Act, 2005, is a separate Code, it would not be open to the respondents to levy duties of customs on goods moved from Domestic Tariff Areas into Special Economic Zones, as per the definition found in Section 2 of the Customs Act, 1962. Further, when the definition of term 'export' in Section 2(m) of the Special Economic Zones Act, 2005, is clear and specific, the definition of 'export', found in Section 2(18) of the Customs Act, 1962, cannot be made applicable for the levy of duties of customs on goods supplied from the Domestic Tariff Areas to the Special Economic Zones. As such, it would not be proper on the part of the respondents to levy duties of customs on goods supplied from the Domestic Tariff Areas to the units situated in the Special Economic Zones. If levy of duties of customs are to be made applicable to such goods it could only be by way of appropriate amendments introduced in the Customs Act, 1962, as well as in the Special Economic Zones Act, 2005. As such it is clear that it would not be open to the respondents to levy duties of customs on such goods, by way of Notifications or Circulars. The writ petitions are ordered accordingly. No costs."

6.7 In view of the above provisions and orders, the legal position prevailed during the period involved in the present appeal, does not authorise levy of export duty on supply of goods from DTA to SEZ Unit. Therefore, I am of the considered view that the decisions of Hon'ble Supreme Court in the case of **Union of India Vs. Adani Power Ltd.** [(2025) 36 Centax 257 (S.C.)] and Hon'ble High Court of Andhra Pradesh in the case

of **TUF Metallurgical Pvt. Ltd. vs. Union of India** [(2025) 35 Centax 280 (A.P.)] are squarely applicable to the facts of the present appeal; and therefore, demand of export duty on supply of the goods by the appellant to the SEZ unit is not sustainable. Therefore, the impugned order passed by the adjudicating authority is required to be set aside.

7. In view of the foregoing discussion, the statutory provisions and the binding judicial pronouncements, it is abundantly clear that during the period involved in the present appeal, there was no authority of law to levy export duty on supplies of goods from the Domestic Tariff Area to a Special Economic Zone unit. The issue now stands conclusively settled by the Hon'ble Supreme Court in *Union of India v. Adani Power Ltd.* [(2025) 36 Centax 257 (S.C.)] and further reinforced by the judgment of the Hon'ble Andhra Pradesh High Court in *TUF Metallurgical Pvt. Ltd. v. Union of India* [(2025) 35 Centax 280 (A.P.)], wherein the very basis for such levy has been held to be unsustainable in law. These decisions are squarely applicable to the facts of the present case and leave no scope for a contrary view. Accordingly, the demand of export duty raised on the appellant in respect of supplies made from DTA to the SEZ unit is without authority of law and cannot be sustained.

7.1 Accordingly, the Order-in-Original No. 05/AR/ADC/SRT/2024-25 dated 08.11.2024 passed by the Additional Commissioner of Customs, Customs Division, Surat, is hereby set aside, and the appeal is allowed with consequential relief, in accordance with law.



F.No. S/49-263/CUS/AHD/2024-25


(AMIT GUPTA)

Commissioner (Appeals),
Customs, Ahmedabad

Date: 01.01.2026

By E-mail (As per Section 153(1)(c) of the Customs Act, 1962)

To

M/s Suroj Buildcon Pvt Ltd.,

33, Srimali Society, 402, Vartali Apartment,

Navrangpura, Ahmedabad-380 009, Gujarat.

(email: info@suroj.in)

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
(email: ccoahm-guj@nic.in)
2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
(email: cus-ahmd-guj@nic.in rra-customsahd@gov.in)
3. The Additional Commissioner of Customs, In-charge: Custom Division Surat, Ahmedabad. (email: patoadc-srtcust@gov.in adjcus-surat@gov.in cus-ahmd-adj@gov.in Custech.surat@gov.in)
4. The Deputy Commissioner of Customs, Custom Division Surat, Ahmedabad. (Email: Custech.surat@gov.in)
5. The specified Officer, Jubilant SEZ, Bharauach.
6. Shri. Anand Nahar, CA & Auhtorised Rep. (email: anand.nahar@arnk.ican.in)
7. Guard File.

